

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW YORK**

\_\_\_\_\_  
In Re: \_\_\_\_\_ x

Richard and Desmarie Griffin

Chapter 13  
Case No. 10-22431

\_\_\_\_\_  
Richard and Desmarie Griffin \_\_\_\_\_ x

Plaintiff,

Adv. No. 10-8361

v.

American Home Mortgage Servicing  
Defendants,

\_\_\_\_\_  
\_\_\_\_\_ x

**Reply Affirmation in Opposition to the Motion to Dismiss Case**

COMES NOW Richard and Desmarie Griffin, the debtors by and through their attorney Joshua N. Bleichman, states that I have knowledge of the following and state the same is true except for those matters stated “upon information and belief” and as to those matters, we believe them to be true.

1. This affirmation is in reply to the motion of American Home Mortgage Servicing Inc. to dismiss.

2. Plaintiff has misapplied payments as follows:

05/02/09 – Payment: \$110.00

02/05/09- Payment: \$7,732.1

See Exhibit “A” Plaintiff account history.

3. Furthermore, Plaintiff Account history shows miscellaneous payments that were unapplied:

09/04/08- Misc: \$165.00

2/19/08- Misc: \$105.00

See Exhibit “A” Plaintiff account history.

4. Defendant was negligent in applying mortgage payments, which resulted in excessive late fees and interest charges. (See Exhibit "A")
5. As states in the Mortgage and Note Insurance Proceeds breach the contract as follows,
  - a. First, to pay interest due under the note;  
Next, to pay principal due under the note; and  
Next, to pay the amounts due lender under Section 3 of this Security Instrument.  
Such payments would be applied to each periodic payment in the order in which it became due. Any remaining amounts will be paid as follows:  
First, to pay any late charges;  
Next, to pay any other amounts due under this Security Instrument; and  
Next, to reduce the principle balance of the note. (See Exhibit "B")
6. Plaintiff is likely to succeed on the claim against American Home Mortgage, because failed to comply with RESPA requirements in responding to the QWR. (See Exhibit "C")
7. Defendant American Home Mortgage failed to respond to the following questions that were requested:
  - a. Identify the provision under the Deed of Trust and/or note that authorizes charging each and every such fee against the loan of the debtors.
  - b. Please attach copies of all property inspection reports and appraisals.
  - c. A complete copy of any key loan transaction report or reports and any reports indicating any charges for any "add on products" sold to the debtors in connection with this loan from the date of the loan to the date of this letter.
  - d. A copy of any mortgage Pooling and Servicing Agreement and all Disclosure Statements provided to any Investors with respect to any

mortgage-backed security trust or other special purpose vehicle related to the said Agreement and any and all Amendments and Supplements thereto.

- e. If a copy of the Pooling and Servicing Agreement has been filed with the SEC, provide a copy of SEC Form 8k and the Prospectus Supplement, SEC Form 424b5.
- f. The name, address and phone number of any Trustee under any pooling or servicing agreement related to this loan.
- g. A copy of the Prospectus offered to investors in the trust.
- h. Copies of all servicing, master servicing, sub-servicing, contingency servicing, special servicing, or back-up servicing agreements with respect to this account.
- i. All written loss-mitigation rules and work-out procedures related to any defaults regarding this loan and similar loans.
- j. The procedural manual used with respect to the servicing or sub-servicing of this loan.
- k. A summary of all fixed or standard legal fees approved for any form of legal services rendered in connection with this account.
- l. Is this loan subject to any Electronic Tracking Agreement? If the answer is yes, then state the full name and address of the Electronic Agent and the full name and address of the Mortgage Electronic Registration System.

- m. Is the servicing of this loan provided pursuant to any type of mortgage electronic registration system? If the answer is yes, then attach a copy of the mortgage electronic registration system procedures manual.
  - n. A copy of the LSAMS Transaction History Report for the debtors' mortgage loan account, with a detailed description of all fee codes.
  - o. Is this a MERS Designated Mortgage Loan? If the answer is yes, then identify the electronic agent and the type of mortgage electronic system used by the agent.
  - p. Is this mortgage part of a Mortgage Warehouse Loan? If so, then state the full name and address of the Lender and attach a copy of the Warehouse Loan Agreement.
  - q. Upon any default or notice of default, state whether or not the Mortgage Warehouse Lender has the right to override any servicers or sub-servicers and provide instructions directly to the Electronic Agent? If the answer is yes, then specifically identify the legal basis for such authority.
  - r. Is this mortgage part of a Whole Loan Sale Agreement? If the answer is yes, then state the name and address of the Purchaser, the Custodian, the Trustee, the Electronic Agent and any Servicer or Sub-Servicers.
8. Defendant American Home Mortgage admits to fail to respond fully to the "Qualified Written Request".
9. Lender Obligations and Rights: Lenders have the right to expect that borrowers who are asking for loan modifications are doing so in good faith. This means that the borrowers are being truthful as to what their expectations of further hardship

and income will be. Lenders, as do borrowers, need to act in good faith, by giving borrowers correct and timely information, and by understanding that at the other end of the phone is a borrower who is on the verge of losing their home.

**WHEREFORE** Plaintiff respectfully requests that the Defendants Motion to dismiss entire Adversary Proceeding is denied and Plaintiff be awarded sanctions and attorney fees for opposing a frivolous matter.

Dated: August 11, 2010

/s/Joshua N. Bleichman  
Joshua N. Bleichman  
Bleichman and Klein  
268 Route 59  
Spring Valley, NY 10977

CERTIFICATE OF SERVICE

I, Joshua N. Bleichman, an attorney admitted to practice before this court affirms under the penalties of perjury that I am not a party to this action and that I am over the age of 18 years old. I served the Reply Affirmation in Opposition of Motion to Dismiss Case on August 11, 2010 by depositing a true copy thereof by Regular Mail in a post-paid wrapper, placing it in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York, first class mail, addressed to the following persons:

Jordan M. Smith  
Akerman Senterfitt LLP  
335 Madison Avenue  
Suite 2600  
New York, NY 10017

/s/ Joshua N. Bleichman  
Joshua N. Bleichman